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2 May 1957

MEMORANDUM FOR: Mr. Houston

SUBJECT : Veterans' Preference Act - Applicability to CIA

1. The Veterans' Preference Act places veterans in a preferred position in regard to separation from Federal employment in cases of reductions in force. In addition, the Act and the Civil Service Commission's regulations prescribed thereunder, set up reduction in force procedures and employee preferences therein which cover non-veterans as well as veterans. This Agency has, as a matter of practice, followed the requirements of the Veterans' Preference Act in regard to termination, re-employment, etc.,

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[redacted]
To date there has been no resolution or even a test of the question whether or not the Act is applicable to the Agency.

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Those cases are Scher v. Weeks (Tab A), in which the separation was based upon authority in the Department of Commerce Appropriation Act of 1953 (66 Stat. 549, 567), and Service v. Dulles (Tab B), in which the separation was based upon authority in the Department of State Appropriation Act of 1950 (63 Stat. 447, 456). Although the question of veterans' preference did not arise in either case, the court in each case held that the statutory language left absolute discrimination in the head of the Department and the reasons for the exercise of his discretion were immaterial. The ruling in the Service case seems particularly important because the Secretary of State admittedly exercised his discretion to separate Service because of a finding of the Civil Service Commission Loyalty Board which was held by the court to be a nullity. A Supreme Court decision on the Service case is pending, but because of the peculiar facts in regard to the Loyalty Board finding,

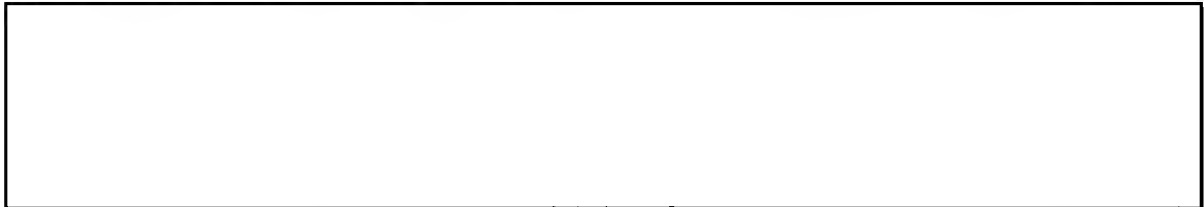
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3. In Myers v. Hollister (Tab C), the separation of a veterans' preference eligible under a special authority in the Mutual Security

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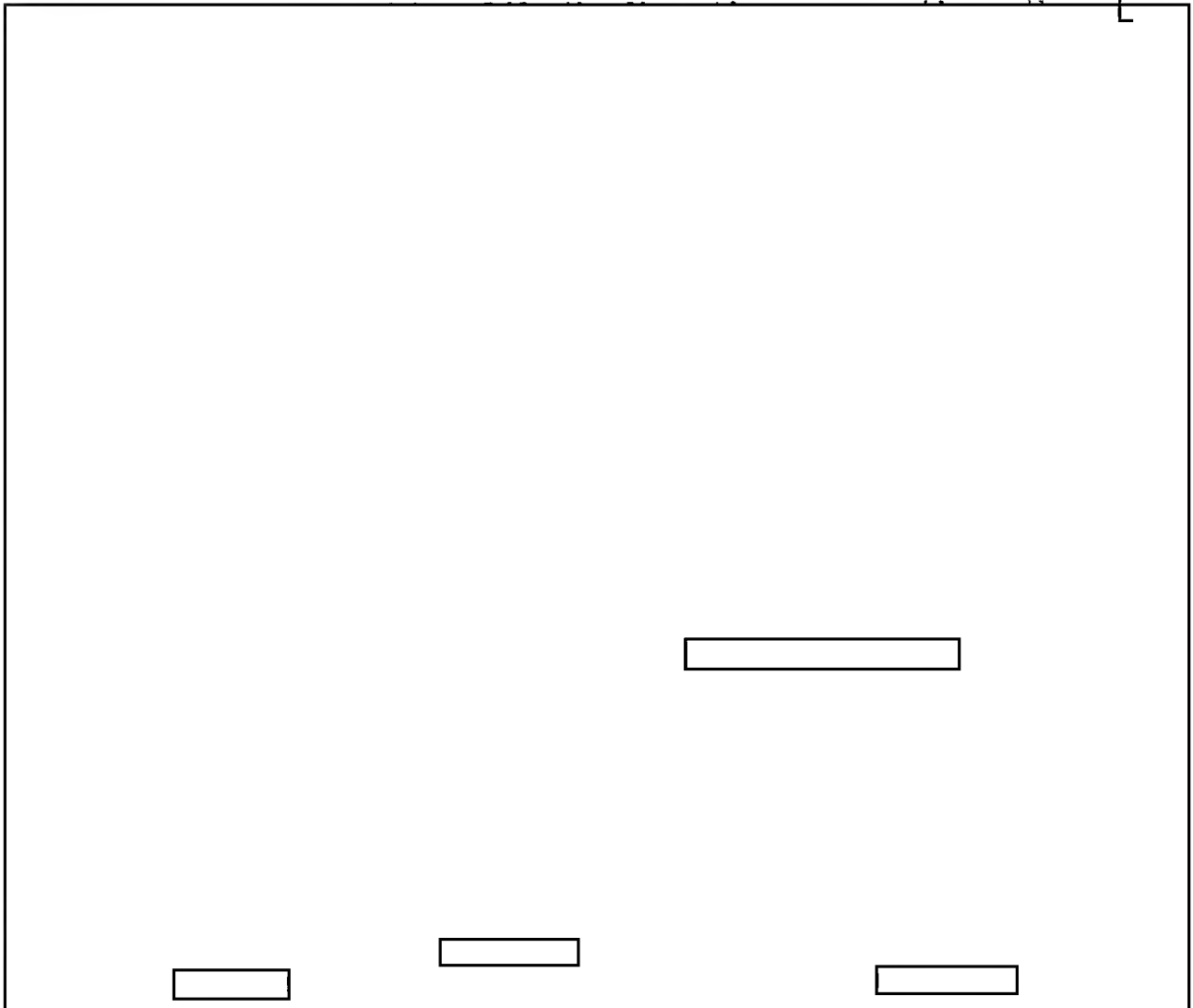
Act of 1952 was upheld by the court. It is probable that Mr. Donald B. MacGuineas, who expressed the informal opinion of the Department of Justice mentioned in paragraph one above, based his opinion on the finding of the court in the Myers' case. There the court held that the special statutory authority granted to the Director of Mutual Security overcame the Veterans' Preference Act which occupied the position of a

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4. Another point of interest in the Scher and Service cases is the statement of the court in each case that it should be noted that Appellant's discharge carries no implication that he might be either

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(Discrimination in Employment). It is doubtful that any harm is done by the omissions, but consideration should be given to including a reference to [] in each.

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6. The most noteworthy omission in the series of regulations on separation is one on reduction in force procedures. [] the Office of Personnel advises that several years ago a proposed regulation on this subject was drafted but for various reasons, including the problem of the rumors which such a regulation might start, it was filed without action. Both [] paragraph B(2)(a) and proposed [] paragraph 2 make reference to veterans' preference and reductions in force and in doing so at least infer that Civil Service Commission regulations are controlling in such cases. This raises a question as to whether or not we should delete such references from our regulations in order to give us a freer hand in reductions in force and veterans' preference cases when we may not desire to follow Civil Service Commission procedures. This is not to say that the referenced regulations would preclude separations in such cases under Section 102(c) of the National Security Act, especially in view of the several court rulings on similar statutory authorities mentioned above.

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Office of General Counsel

Attachments

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